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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,569	08/28/2003	Janell M. Gottesman	P-11629.00	8218

27581 7590 09/13/2007  
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EXAMINER
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RAPILLO, KRISTINE K

ART UNIT	PAPER NUMBER
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3609

MAIL DATE	DELIVERY MODE
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09/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/650,569

Applicant(s)

GOTTESMAN, JANELL M.

Examiner

Kristine K. Rapillo

Art Unit

3609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

Claims 1 – 20 are pending.

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "80" has been used to designate both EMR and patient in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 250 (Patient Education Program) in Figure 2.

3. The drawings are objected to because reference character 390 (Physician Delivers Diagnosis) in Figure 4 is described in the specification for Figure 5, paragraph [0028]. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be

Art Unit: 3609

removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures.

4. The drawings are objected to because the reference characters in Figure 5 (430 – Patient Educational Material Selected from Database based on Diagnostic Code, 440 – Patient Services Notified, 450 – Patient Receives Information, 470 – Patient Processes Information, and 480 – Patient Services Facilitates Communication between Patient/Physician) are not described in the specification for Figure 5, they are described in other figures, therefore, the flow of the diagram is not described. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Figure 8, which includes reference numbers 420 and 550, is not described in the specification.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 – 9, 11 – 13, and 15 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (U.S. Publication No. 2004/0078220 A1) in view of Norris et al. (U.S. Patent No. 6,669,631).

In regard to claim 1, Jackson teaches a system comprising:

- A patient portal to the central manager for gathering information (paragraphs [0078] and [0092]). The examiner interprets the personalized patient website to be equivalent to a patient portal disclosed by Jackson.
- A physician portal to the central manager for providing the gathered information (paragraph [0054]) – Jackson discloses a web based medical network of which a physician would have access, obtaining diagnostic information (paragraph [0030]), wherein the central manager retrieves selected educational content for delivery through the patient portal based on the diagnostic information (paragraph [0054]). The examiner interprets health care delivery to include education information based on a patient diagnosis.

Art Unit: 3609

Jackson fails to explicitly teach a database system with access to medical educational content.

Norris et al. teaches a central manager having a database with access to medical educational content for patients (column 11, line 29 through column 12, line 4 and column 12, lines 28 – 46).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a central database system with access to medical educational content as taught by Norris et al. with the motivation of enabling physicians or other care givers the ability to provide tailored health care information to patients based on a medical diagnosis (column 5, lines 43 – 50).

In regard to claim 2, Jackson teaches a central manager database system as per claim 1.

Jackson fails to explicitly teach a system of information gathered from implantable medical devices.

Norris et al. teaches a system wherein the gathered information includes performance data from an IMD (column 5, lines 29 – 36).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 3, Jackson discloses, as per claim 1, wherein the central manager retrieves the selected educational content based on a diagnostic code

Art Unit: 3609

(paragraphs [0065] and [0066]). The examiner interprets the 'common language and code' taught by Jackson to include diagnostic codes in reference to a patients diagnosis. Therefore, information (both education and historical) can be acquired via the use of codes.

In regard to claim 4, Jackson teaches a system as per claim 1.

Jackson fails to teach a system where the central database retrieves educational materials selected by physician instructions.

Norris et al. teaches a system wherein the central manager retrieves the selected education content based on physician instructions received through the physician portal (column 15, lines 4 – 10 and lines 19 – 29).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 5, Jackson teaches a system comprising:

- Means for providing the patient information to a physician and receiving a diagnosis based on the information (paragraph [0031]. Jackson teaches the use of an application service provider to transmit patient information to a physician as well as providing a patient with a diagnosis.
- Means for generating an information collection deliverable to a patient (paragraph [0054]). Jackson teaches a system where the means for

generating information for a patient is accomplished via a web-based network.

Jackson fails to explicitly teach a means for gathering patient information.

Norris et al. teaches a means for gathering information (column 13, lines 47 – 52) via a public domain database.

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 1, and incorporated herein.

In regard to claim 6, Jackson teaches a method for conducting remote medical evaluations, the method comprising:

- Receiving diagnostic information through the physician portal from the physician based on the medical information (paragraph [0081]);
- Identifying educational content relevant to the diagnostic information (paragraph [0081]; and
- Providing the diagnostic information and educational content through the patient portal (paragraph [0081]).

Jackson fails to teach a method of receiving patient medical information via a patient portal or a method of providing medical information to a physician through a physician portal.

Norris et al. teaches a method of receiving medical information from a patient through a patient portal into a central server (column 12, line 66 through column 13, line



Art Unit: 3609

10) and providing the medical information to a physician through a physician portal that is in communication with the central server (column 5, lines 12 – 16).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of receiving patient medical information via a patient portal or a method of providing medical information to a physician through a physician portal as taught by Norris et al. with the motivation of monitoring a patients medical history and providing diagnostic, therapeutic, and educational materials via a computer system (column 1, lines 8 – 17).

In regard to claim 7 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising:

- Receiving a request through the physician portal to conduct a remote evaluation with the patient from a physician (paragraph [0029]);
- Providing a medical questionnaire to the patient (paragraph [0071]) where the prompts for information initiated by the network is equivalent to a questionnaire; and
- Receiving the completed questionnaire from the patient as part of the medical information (paragraph [0072]).

In regard to claim 8, Jackson teaches a method as per the method of claim 7.

Jackson fails to explicitly teach receiving data from an implanted medical device.

Art Unit: 3609

Norris et al. teaches a method to include receiving device data from an IMD implanted within the patient, wherein the device data forms part of the medical information (column 5, lines 29 – 36).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 9 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising generating an electronic prescription as part of the diagnostic information; and transmitting the electronic prescription to a pharmacy (paragraph [0075]).

In regard to claim 11 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising: providing an electronic medical record correlated to the patient (paragraph [0064]); and updating the electronic medical record based on the diagnostic information (paragraph [0080]).

In regard to claim 12 Jackson discloses, as per the method of claim 6, Jackson teaches a method further comprising providing instructions through the physician portal to follow up personnel based on the diagnostic information (paragraph [0081]).

In regard to claim 13, Jackson discloses, as per the method of claim 6, Jackson teaches a method wherein the educational content is identified based on diagnostic

codes (paragraph [0065] and [0066]).

In regard to claim 15, Jackson teaches a method for conducting remote medical evaluations, the method comprising:

- Accessing a physician portal linked with a central manager (paragraph [0055]);
- Receiving patient medical information including IMD data through the physician portal from a patient;
- Evaluating the patient medical information (paragraph [0106]);
- Rendering a diagnosis (paragraph [0080]);
- Selecting educational content for delivery to the patient (paragraph [0054]);
- Sending the diagnosis and the educational content through the physician portal to the patient (paragraph [0054]); and
- Billing for the remote medical evaluation (paragraph [0058]).

Jackson fails to teach a method to receive patient medical information through the physician portal from a patient.

Norris et al. teaches a method in which patient medical information, including IMD data, is received through the physician portal from a patient (column 5, lines 29 – 36).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

Art Unit: 3609

In regard to claim 16, Jackson discloses, as per the method of claim 15, further comprising notifying additional personnel of follow-up activities for the patient through the physician portal (paragraph [0081]).

In regard to claim 17, Jackson discloses, as per the method of claim 15, further comprising updating an electronic medical record corresponding to the patient (paragraph [0080]).

In regard to claim 18, Jackson discloses, as per the method of claim 15, further comprising generating an electronic prescription (paragraph [0075]).

In regard to claim 19, Jackson teaches a method as per the method of claim 15.

Jackson fails to teach a method where the educational material is selected based on suggested information from the central database.

Norris et al. teaches a method wherein the educational content is selected based on suggested information received from the central manager (column 5, lines 17 – 28).

The motivation for combining the teachings of Jackson and Norris et al. is discussed in the rejection of claim 6, and incorporated herein.

Art Unit: 3609

In regard to claim 20, Jackson teaches, as per claim 19, a method wherein the suggested information is generated based on diagnostic codes (paragraphs [0065] and [0066]).

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson in view of Norris et al. as applied to claim 6 above, and further in view of [www.WebMD.com](http://www.WebMD.com) (November, 2002).

In regard to claim 10, Jackson and Norris et al. teach a method for conducting remote medical evaluations as per claim 6.

Jackson and Norris et al. fail to explicitly teach a method wherein the educational content includes one or more topics selected from the group: disease education, medical device education, general medical information, diet, exercise, or clinical resources.

[www.WebMD.com](http://www.WebMD.com) teaches a method where the educational content includes disease education (referred to as Medical Information on the WebMD website), medical device education (can be found in the Clinical Trials section of the WebMD website), general medical information (referred to as Medical Library on the WebMD website), diet (referred to as Food and Nutrition on the WebMD website), exercise (referred to as Sports and Fitness on the WebMD website), or clinical resources (referred to as Clinical Trials on the WebMD website).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method where the educational material is includes disease education, medical device education, general medical information, diet, exercise, or clinical resources as taught by [www.WebMD.com](http://www.WebMD.com) with the motivation of providing a toll to manage health concerns (paragraph 21) in which you can find education material in regard to diseases, exercise, nutrition, physicians, and more.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson in view of Norris et al. as applied to claim 6 above, and further in view of Lin et al. (E-healthcare: A vehicle of change. American Business Review. West Haven: Jun 2002. Vol. 20, Iss. 2; page 27, 6 pages).

In regard to claim 14, Jackson and Norris et al. teach a method for conducting remote medical evaluations as per claim 6.

Jackson and Norris et al. fail to teach a method of customer loyalty.

Lin et al. teaches a method of providing customer loyalty information through the physician portal (paragraph [0023]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method of providing customer loyalty information through the physician portal as taught by Lin et al. with the motivation of providing a secure means of transmitting patient data to appropriate parties - i.e. pharmacist, specialist (paragraph 22).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

In related art (U.S. Publication No. 2001/0037215) Sparks teaches a medical educational, and home healthcare distribution system. This allowed for medical education, a physician portal, patient diagnosis, expert generated medical information, medical tests/devices, and remote diagnosis.

In related art ("How Connectivity is Changing Practice." Medical Economics. Oradell: Jul 10, 2000. Vol. 77, Iss. 13; pg. 166, 5 pages) Terry teaches a system in which a computer is used for medical education via online web sites Healtheon/WebMD.

In related art ("The WebMD Connection Traditional Health Care at Internet Speed, Backers Say." Chicago Tribune. Chicago, Ill.: Oct 11, 2000. Pg 7) Hundley discloses the use of WebMD in physicians offices, as well as insurers, hospitals, pharmacies, and patients.

In related art ("Allowing FDA Regulation of Communications Software used in telemedicine: A Potentially Fatal Misdiagnosis?" Federal Communications Law Journal. Los Angeles: May 1998. Vol. 50, Iss. 3; pg. 731, 21 pgs) Schooley provides detailed definitions of telemedicine.

Art Unit: 3609

In related art ("New dimensions open up for patients and doctors." Financial Times. London (UK): Dec 1, 1999. pg. 04) Moran discloses how the use of WebMD acts as a healthcare portal for doctors and patients.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine K. Rapillo whose telephone number is 571-270-3325. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Akm Ullah can be reached on 571-272-2361. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KKR

  
AKM ULLAH  
SUPERVISORY PATENT EXAMINER



